IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04 .04.2007

Coram

The Honourable Mr.Justice R. Balasubramanian
And
The Honourable Mr. Justice A.C.Arumugaperumal Adityan

CRIMINAL APPEAL Nos.151 of 2001
& Crl.R.C.Nos.238 of 2001

C.A.NO.151 of 2001

State by
Inspector of Police C.B.C.I.D.
All women Police Station
B9, Saravanampatty Police Station
Coimbatore City. .. Appellant

-Vs.-

Anbazhagan ..Respondent/Accused

Crl.R.C.No.238 of 2001

Bakkiam ..Petitioner/PW1

-vs.-

1. Anbazghagan

2. State rep.by
Inspector of Police
B3 Kattur Police Station,
Kovai. .Respondents/Accused & Complainant

Appeal against the judgment dated 8.11.2000 in S.C.No.214 of 2000 and on the file of I Additional Sessions Judge-cum-Chief Judicial Magistrate, Coimbatore.

Criminal Revision Petition against the judgment of acquittal dated 8.11.2000 in S.C.No.214 of 2000 on the file of I Additional Sessions Judge-cum-Chief Judicial Magistrate, Coimbatore.

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For Appellant in
C.A.Nos.151 &
R.2 in Crl.RC.No.238/2001 : Mr.N.R.Elango

For Petitioner in
Crl.R.C.No.238/2001 : Mr.M.Venkataraman

For R.1 in C.A.No.151/2001
& Crl.R.C.No.238/2001 : Mr.K.V.Sridharan

J U D G M E N T

(Judgment of the Court was delivered by
R.Balasubramanian, J)

This appeal is by the State challenging the acquittal of the respondent herein by the Court of Sessions, Coimbatore in S.C.No.214 of 2000. The revision is by P.W.1 in that sessions case. The respondent in that sessions case was tried under Section 201 I.P.C. At the end of the trial, he was acquitted. As noted earlier, that judgment of acquittal is challenged before this court in the appeal filed by the State and in the revision filed by P.W.1. Heard Mr.N.R.Elango, learned Additional Public Prosecutor for the State and Mr.K.V.Sridharan, learned counsel for the respondent. We heard Mr.M.Venkataraman for the revision petitioner and Mr.K.V.Sridharan again for the respondent.

2. The sum and substance of the prosecution case is that a young girl, aged about 16 years and who is the daughter of P.W.1, left the house on the evening of 22.12.1995 to attend her night shift work in Sundaram Mills situated at Chinnavedampatti Village within the jurisdiction of the Court of Sessions; she did not return on the next day after her duty; this resulted in a hue and cry in the house of P.W.1; people gathered and ultimately the body was found dead in a dry well on the evening of 23.12.1995. Thereafter Law was set on motion by a complaint coming to be registered on the file of the police station concerned in Crime No.81 of 1995 - the crime was registered under Section 174 of the Code of Criminal Procedure, being "suspicious death". Investigation commenced on the registration of the crime and the respondent herein, who was the then Inspector of Police - investigating officer, was incharge of the investigation from 23.12.1995 till 23.3.1996. The respondent though knew fully well, who the real offenders are, yet, collected materials to bring home the prosecution case against only one person by name Sundaram alias Sundarasamy and as a result of those materials collected, a final report came to be filed on 28.8.1996 by the officer then incharge of the police station against Sundaram alias Sundarasamy under Sections

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376, 302 and 201 I.P.C., in the very same Court of Sessions, which was taken on file as S.C.No.110 of 1998 and therefore with the intention of screening the offender from legal punishment, he gave information regarding that offence (by collecting materials pointing out the guilt of another person) which he knows or believes to be false. The prove their case, the prosecution examined P.Ws.1 to 25 besides marking Exs.P.1 to P.52 and M.Os.1 to 23. The defence did not let in any oral evidence. But however the defence marked Exs.D.1 to D.7. Since the charge against the accused is only under Section 201 I.P.C. - the sum and substance of which we have already given earlier, we are of the opinion that we need not give the entire evidence let in by the prosecution to prove the offence under Sections 376 and 302 I.P.C., since it would be suffice to advert to the relevant material namely, whether during the course of investigation the respondent knew, who the real offenders are and yet did he proceed to collect materials with a view to screen them and project a scapegoat in court for the purpose of trial? To complete the narration of facts, we would like to state that when S.C.No.110 of 1998 was taken up for recording evidence on 11.11.1998 and 12.11.1998 the witnesses examined therein turned hostile. P.W.25 in the present case was the Station House Officer when the trial commenced in the earlier sessions case. That trial was proceeded against only one accused namely, Sundaram alias Sundarasamy. On the witnesses turning hostile in that sessions case, P.W.25 moved the Court of Sessions at that time for permission to re-investigate and accordingly such permission was granted. On such permission to re-investigate granted, S.C.No.110 of 1998 was brought to an abrupt end without allowing it to reach its logical end. After thorough re-investigation, P.W.25 filed a final report in Court in respect of the same occurrence against six accused, in which, the present respondent was A.6. That sessions case was taken on file as S.C.No.96 of 2000. However on an application taken out by A.6 in that sessions case that there is misjoinder of parties, the then learned Sessions Judge passed a detailed order on merits splitting up the case against A.6 in that sessions case and trial in S.C.No.96 of 2000 went on only against the remaining five accused. The split up case against A.6 in that sessions case was taken on file as S.C.No.214 of 2000, out of which the present appeal and the revision had arisen. S.C.No.96 of 2000 also ended in acquittal and the State and the private party came before this court in C.A.Nos.152 of 2001 and Crl.R.C.No.239 of 2001. By separate judgment we have disposed of both the above proceedings reversing the judgment of acquittal.

3. As we indicated earlier, the crux of the issue in the proceedings before us is, whether the respondent knew, who the real offenders are and yet did he collect materials (thereby giving an information) that the accused is somebody else other than the real offenders? With the limited scope as indicated above, let us proceed to state in sum and substance what the witnesses spoke in the court of sessions. P.W.1 is the mother of the victim. She only speaks about

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her daughter going for duty; not returning home; dead body found in the well and she set the Law on motion. Therefore at the best , her evidence would only show that her daughter, who left for work on the previous evening to the mill did not return home on the next day morning and she was found her dead body in a dilapidated well on that evening. Of course, she on her own and with a backing of a political party had sent a complaint to the higher ups that the investigation is not going on proper lines, as a result of which P.W.20, the Inspector of Police, Crime Brach CID was ordered to conduct an enquiry on that complaint, which he held for three days in the first week of April, 1996 and sent his report. P.W.1's evidence, in our considered opinion, do not take the prosecution case any further. Therefore we leave the evidence of P.W.1 as it is. P.W.2 is examined as an eye witness to the crime of rape, murder and screening the evidence of the offence. His evidence in sum and substance on the issue concerned in this case is the following:-

> "He was on duty on that day; after attending to some odd job, he went into the mill once again; as he entered the mill, he found the food basket of the victim in this case; on hearing the victim's voice, he asked A.2 as to what is happening; A.2 answered that the boss is doing like that and when he (the witness) asked A.2 as to how he can say like that, A.2 asked him to go to his department and watch if anybody is coming; A.2 called him a little later stating that the victim has become unconscious because of the act performed by the boss;..... the girl was taken to the bed room and after some time when he went back to the mill, he found that the food basket of the victim was not there; A.2 called him; the boss told him that since he did like that to the girl, she died; he (P.W.2) expressed his anguish by stating that since they informed him earlier that the girl is unconscious and that she may taken to the bed room to rest and how can they say that she is dead now, for which A.2 answered that they would manage everything and if he (P.W.2) discloses this to anyone, his mother and his entire family would be eliminated, for which he prostrated at their legs and promised that he would not divulge; on the following Sunday (must be 24.12.1995) when he was grazing the cattle he was summoned by the mill owners and he accordingly went; A.2's father and others took him in their car to the police station and enroute he was informed that if he is questioned of any incident in the mill, he must plead ignorance; he was taken to the police station and he was called inside; the Inspector of Police Anbazhagan (the respondent) was there; the Inspector asked his name and questioned him

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as to whether the victim had come for work on the day; without knowing what to tell, he put his head down; Sundarasamy (the sole accused in S.C.110 of 1998) was summoned inside the police station; when he was questioned by the police A.1, A.2 (in S.C.96 of 2000) and their relatives were there; two days later he was taken to a room in the upstairs in the police station where he was confined for two or three days; A.1, A.2 (in S.C.96 of 2000), A.2's father and other relatives were there; Inspector of Police (the respondent) asked him whether he can read and he answered that he knows by stating that he had studied upto sixth standard; he (P.W.2) was given a paper containing written material and he was asked to read; he read twice or thrice; Inspector of Police Anbazhagan (the respondent) threatened him that he must speak only as written in the paper given to him in all the places, as otherwise, he (P.W.2) would also be locked up with Sundarasamy (sole accused in S.C.No.110 of 1998); he agreed and signed; five or six months later, A.1 (in S.C.96 of 2000) told him that C.I.D. police is summoning him; he (P.W.2), A.1, A.2 (in S.C.96 of 2000) and Palanisamy went in their car; in another car mill owner and another lady worker came; enroute A.2 told him (P.W.2) that if he is asked, he must tell only what he was already told in the police station, as otherwise he (P.W.2) would also be put in the case and he would be tortured with pins; he (P.W.2) agreed and went with them; C.I.D. police asked him whether the victim had come for work and he answered in the negative; they asked him, who committed the crime and at that time A.1 and A.2 (in S.C.96 of 2000) were by his side and he said, he did not know; two days before attending the court, he (P.W.2) was asked to meet their lawyer; A.1 (in S.C.96 of 2000) took him to their lawyer, who asked his name and then, he (the lawyer) advised him that he (P.W.2) need not have any connection with the owners and for all the questions to be asked in court, he (P.W.2) should say that he did not know; he agreed to say so; he (P.W.2) was taken to the court in a Car and he was asked to sit in a place away from the view of the police."

When he was cross examined he had admitted that neither in the trial in the earlier sessions case nor before the Inspector of Police Anbazhagan (the respondent) nor before C.B.C.I.D. police he disclosed what he deposed in court in the present sessions case.

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3. P.W.3 is not an eye witness to the crime. But however his evidence shows that he was on night shift in the mill on 22.12.1995 and he worked till 11.30 a.m. in the following morning namely, Saturday. When he was cross examined by the defence he would state as hereunder:-

> "After finishing his night shift on the Saturday morning he went home and slept; at about 6.30 p.m. Sundarasamy (the sole accused in S.C.No.110 of 1998) and others met him on their way to their house; Sundarasamy came back within fifteen minutes and when asked Sundarasamy said that as police is there he (Sundarasamy) had come back and he wanted to see his Uncle; after seeing his Uncle he came back stating that the police is enquiring everybody in the company and therefore taking him (P.W.3) in his cycle Sundarasamy went to the police station; leaving P.W.3 outside, Sudarasamy went inside; though P.W.3 waited there for half an hour,Sundarasamy did not come out; therefore P.W.3 returned to his house and at 12.00 on that night, two policemen came in a Car with the mill owner's son and took P.W.3 to the police station, where P.W.3 was enquired and then asked to go."

P.W.4 states that he is the friend of Rathinam (A.1 in S.C.No.96 of 2000) and on the day following the occurrence day, he went to the police station to see Rathinam, where the police inspector (the respondent) asked him to sign. P.W.4 asked as to why he must sign, for which the Inspector of Police told P.W.4 that as he (P.W.4) is the friend of A.1 (in S.C.No.96 of 2000) he can sign and accordingly he had signed. P.W.4 was also examined to prove that the Inspector of Police did not prepare the inquest report at the spot but only at the police station. When he was cross examined by the defence he asserted that since Rathinam (A.1 in S.C.No.96 of 2000) is his friend he went to see him in the police station. P.W.5 had been examined to prove that the inquest was not conducted at the spot and the inquest report was prepared only at the police station. P.W.6 is examined for a similar purpose. P.W.7 is the Village Administrative Officer during the relevant time for Chinnavedampatti Village. We extract his evidence as hereunder:-

> "The occurrence was on 22.12.1995; at that time I was the Village Administrative Officer of Chinnavedampatti; on 23rd, 24th and 25th I was not in town; on 26th I returned and went for tax collection; on 27th morning I was contacted over the phone available in a shop close to my office asking me to come to the police station; accordingly I went; the Inspector of Police (the respondent) asked me to give a report that Sundaram alias Sundarasamy (the sole accused in

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S.C.No.110 of 1998) surrendered before me on his own; I initially refused stating that it is a police case; however I reduced into writing what the Inspector of Police told me at that time; I was told to write that Sundarasamy (wrongly typed as Sundaramoorthy) surrendered on 23.12.1995; however I do not remember the time of surrender as mentioned by them; Ex.P.9 is the document which I wrote and I wrote that document in the police station; the contents of Ex.P.9 are false and it is incorrect to say that the said accused surrendered; I have not taken the accused to the police station but however he was already there; then the Head Constable (P.W.21) recorded the statement of the accused, in which I have signed and Ex.P.10 is my signature in that statement."

When he was cross examined he admitted that when he was examined by the Magistrate under Section 164 of the code of Criminal Procedure he did not disclose that he wrote Ex.P.9 in the police station because he was threatened. P.W.21 is the Head Constable in the then Investigating Police Station. He would depose that though he was on earned leave for twenty days, his earned leave was cancelled by the Inspector of Police Anbazhagan (the respondent) with a call to him to report at the police station and accordingly he reported for duty in the police station on 23.12.1995. On 27th of that month he reduced into writing the confession statement of the accused (the sole accused in S.C.No.110/1998) as dictated to him by the Inspector of Police and when he was recording the confession statement he saw the accused in the police station. He would also depose that at that time he saw on the Inspector's table a wire basket and a tiffin carrier, which he identified as M.O.8 (wire basket) and M.Os.11 and 12 (Tiffin carrier). When he was cross examined, he would admit that he did not know whether pursuant to the confession statement given by the accused he produced any properties.

4. P.Ws.8 and 9 are friends. P.W.8 would state that he went to the police station on 27.12.1995 to get a licence to use the amplifier and at that time he saw in the police station, the Inspector of Police (the accused) and the Village Administrative Officer of Chinnavedampatti (P.W.7). P.W.7 was being enquired at that time. P.W.8 would depose that at that time he saw on the Inspector's table a wire basket and a tiffin carrier. He identified M.O.8 as the wire basket and M.Os.11 and 12 as tiffin carrier. As the Inspector of Police asked him to sign, he signed. P.W.9 is the friend of P.W.8,who would also state that on their way to the police station to get licence he saw the Inspector (the respondent) examining P.W.7. P.W.10 is not an eye witness to the occurrence and his evidence also do not throw any light on the present prosecution case except stating that P.W.1 was examined by the Crime Branch C.I.D. Police Officers and at

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that time he was standing away and therefore he did not know what was the nature of enquiry. But however he would admit that he had signed in that statement as requested by the police officer. P.W.11 has affiliation to a political party. He would only state that the complaints have been sent to higher ups in the police when the investigation in this case was not going on the right lines. P.W.12 is the Head Constable in the then investigating police station, who had accompanied the dead body to the hospital for post-mortem. She would state that after post-mortem she removed the personal belongings found on the dead body and handed over the same to the investigating officer along with her special report. PW.13 is another Head Constable, who would state that he prepared Ex.P.19 the Special Report given by P.W.12. P.W.14 is working as an Office Assistant in the office of the Commissioner of Police, Coimbatore, who only speaks about the complaints given expressing doubts on the investigation done, which were forwarded to the office of the Commissioner of Police and the reports arising therefrom. P.W.15 would depose that he is acquainted with A.1 (in S.C.No.96 of 2000) and he reached the then investigating police station at about 6.00 on 23.12.1995 and on that day A.1 (in S.C.No.96 of 2000) was in the police station for interrogation. P.W.15 was asked to sign for the release of A.1 from the police station and accordingly he signed. When he was cross examined he would state that he went to the police station at 6.00 a.m. on 24.12.1995 at which point of time only he was asked to sign and it is true that he had stated in his evidence in chief that he went to the police station at 6.00 p.m. on 23.12.1995 to meet Rathinam (A.1 in S.C.No.96 of 2000).

5. P.W.16 is the finger print expert working in the finger print bureau in Coimbatore. We extract hereunder her evidence:-

> "On a call from the then investigating police station on 24.12.1995 I went to the crime scene to lift chance prints; there were no chance prints at the crime scene; Ex.P.31 is the report; on 27.12.1995 an eversilver tiffin carrier was sent to us for lifting finger prints; on examination of the same I found three finger prints, which were marked as Y1, Y,2 and Y,3; those finger prints tallied with the specimen left hand middle finger, left hand ring finger and left hand small finger of the suspected accused Sundaram, S/o Arusamy (the sole accused in S.C.No.110 of 1998) sent to the laboratory; Ex.P.32 is the said report and Ex.P.33 is the paper containing finger prints of the suspected accused; on receipt of the finger prints Ex.P.33, they were photographed and then compared; the eversilver tiffin carrier was sent back to the police station; Ex.P.34 is the notes for taking photographs of the finger prints; the tiffin carrier also was photograhed;

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she would depose that if the tiffin carrier was washed or wiped off, all the finger prints available in the tiffin carrier would vanish; when I examined the tiffin carrier I do not find any food or spoiled food; the tiffin carrier was cleanly washed and wiped dry and the tiffin carrier which I examined resembles M.O.12."

P.W.17 is a Mason by profession and he was examined to prove that he witnessed the conduct of the inquest. P.W.18 is a private medical practitioner, who was examined to prove the falsity of the plea of alibi set up by Rathinam (A.1 in S.C.No.96 of 2000) and his mother. P.W.19 is having a photo studio. In the month of December, 1995 as requested by the then Investigating police station, he deputed his friend Kaliappan with a Camera to take photographs. M.O.21 are the developed prints. P.W.20 during the relevant time was the Inspector of Police, Crime Branch CID, Coimbatore. On receipt of the complaint forwarded to his office by the higher ups, he conducted enquiries on 5.4.1996, 6.4.1996 and 7.4.1996 at which point of time Sundarasamy (the sole accused in S.C.No.110 of 1998) was in judicial remand. He sent his report to the higher ups. Since the report was asked for very urgently he examined only the available witnesses and not others. In cross examination he had admitted that Exs.D.1 and D.2 as the statements of P.W.1 and P.W.2 given at that time. (But we find from the records that Ex.D.2 is the deposition of P.W.1 in S.C.No.110 of 1998 on the file of the same court of sessions). P.W.23 is the police photographer, who would state that on 24.12.1995 at 10.15 a.m. on a call made by the then investigating police station, he went to the hospital where he photographed the dead body from different angles. M.O.22 series are the photographs and the negatives. He enlarged those photographs and the enlarged photographs are M.O.23 series. When cross examined, he would admit that for taking the enlarged photographs, M.O.23 series, the negatives were given to him by the Court. M.O.22 series photographs were collected from him by the then investigating officer on 31.12.1995. P.W.24 is the police constable, who prepared Ex.P.47, the rough sketch as directed by the then investigating officer.

6. P.W.25 is the investigating officer. He would depose that S.C.No.110 of 1998 taken for offences under Sections 376, 302 and 201 I.P.C., came for trial before the Court of Sessions on 11.11.1998 and 12.11.1998. Since re-investigation was ordered, he took up investigation in Crime No.85 of 1995 on the file of All Women Police Station (S.C.No.110 of 1998 had arisen out of Crime No.85 of 1995 on the file of All Women Police Station). He examined P.W.1 and other witnesses on several dates. He prepared Ex.P.48, the Observation Mahazar and Ex.P.49, the rough sketch. As noted earlier, he examined almost all the witnesses, who are examined as witnesses in the present sessions case. The examination of all those witnesses were after he took up re-investigation pursuant to court's order. After getting

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prior order from the court, he examined the case properties already lodged in P.R.No.519 of 1995 at 11.00 a.m. on 11.8.1999. He examined P.W.2 on 17.8.1999 by recording his statement and again examined him after a few days thereafter. He had taken steps to get the records from the office of the finger print bureau. On 30.8.1999 he examined P.W.16 by recording her statement. On 2.10.1999 at 9.00 a.m. he arrested Rathinam and at 12.00 noon he arrested Dhanushkodi (A.1 and A.2 in S.C.No.96 of 2000) and brought them to the police station. At 11.00 a.m. on 3.10.1999 he arrested Damodaran (A.3 in S.C.No.96 of 2000). At 10.00 a.m. on 4.10.1999 he arrested Krishnan (A.5 in S.C.No.96 of 2000). All the accused were sent for judicial remand. On 30.10.1999 P.W.25 enquired Inspector of Police Anbazhagan (the respondent herein) on the case details. On 1.11.1999 P.W.25 gave a requisition to the court to send cotton, blood, tissue, oil and broken bangles (i.e.) already case properties, to the laboratory for examination. He gave a requisition to the court to send the semen and saliva of Rathinam, Dhanusu and Damodaran (A.1 to A.3 in S.C.No.96 of 2000) as well as the blue colour inner skirt and vaginal swab to the laboratory at Hyderabad. Ex.P.52 series are the Chemical Examiner's Reports. After completing the investigation, P.W.25 filed the final report in court against the accused namely, six accused including the present respondent under Sections 376, 302 and 120-B I.P.C. When he was cross examined by the defence he admitted as hereunder:-

> "The compliant in Crime No.81 of 1995 came to be registered under the caption "suspicious death" (under Section 174 of the Code of Criminal Procedure). From 5.4.1997 he is working as the Inspector of Police in the present investigating police station. On the occurrence day there was only one All Women Police Station for the entire Coimbatore Town (B.3 Police Station). On 21.3.1996 some areas were transferred to Saravanampatty Police Station. The place of occurrence comes within the jurisdiction of Saravanampatty police station (B.9 Police Station). It is true that the Inspector of Police Anbazghagan was in the investigation only up to 21.3.1996 and thereafter his successor namely, Pichai, Inspector of Police continued the investigation and it is he, who filed the final report against Sundarasamy originally in S.C.No.110 of 1998. When S.C.No.110 of 1998 came up for trial, he (P.W.25) was in the police station as Inspector of Police and the entire case diary in that case was in his custody. However he perused the case diary only when the trial against Sundarasamy commenced. He was in that police station for only ten months prior to the trial. At the time when the trial against Sundarasamy commenced, the Inspector of

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Police Anbazghagan was not in Coimbatore District but he was in Virudhunagar. However he does not know when he (the respondent) was transferred. In the final report filed by him he had shown Sundarasamy as A.4, Dhanusu as A.2, Damodaran as A.3, Krishnan as A.5 and Anbazghagan (Inspector of Police) as A.6. The final report against A.1 Rathinam is under Sections 302 and 376 I.P.C. and the offences alleged against all the accused are under Sections 120-B and 201 I.P.C. In the final report he had indicated that based on the materials collected by him during investigation that Anbazghagan/Inspector of Police had disclosed false materials and the Inspector of Police Anbazghagan was made as an accused only on 16.12.1999 namely, the date on which the final report was filed and prior to that he was not arrayed as an accused. When Bakkiam was examined as P.W.1 in S.C.No.110 of 1998 he was in court. Re-investigation was ordered by the court only on 4.2.1999 and as such he examined Bakkiam/P.W.1 only on 29.6.1999. The Inspector of Police Pichai is not cited as a witness. P.W.25 examined C.B.C.I.D. Inspector of Police namely, P.W.20 on 2.12.1999 and on such examination, he came to know that he had examined P.Ws.1 to 3 and obtained their statements. He went through the statements."

7. When the accused was questioned under Section 313 of the Code of Criminal Procedure, he took a stand of total denial except on the following aspects:-

"He admitted that P.W.1 told him that she left her daughter for her work between 5.30 p.m. and 6.45 p.m. on 22.12.1995. He would state that P.W.2 never told him at the earlier point of time that he saw the food basket of the deceased in the mill and later he did not see that. When P.W.16's evidence was put to him as question No.51 he admitted that evidence as correct. He filed a defence statement in writing wherein he commented the evidence of each one of the witnesses as hereunder:-

P.W.1's evidence is false. P.W.2's evidence is also false. Based on his statement he came to know that Sundaram alias Sundarasamy alone is involved in the crime. In the present trial, the statement of P.W.2 recorded by him under Section 161 of the Code of Criminal Procedure was not put to him and asked whether he was or not the author of the statement. P.W.2 did not say that he never gave any statement to the accused. Since in his statement he did not implicate anybody else except

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Sundaram alias Sundarasamy, he had no chance to know the involvement of any other person in the crime. P.W.2 also did not tell P.W.20 about the involvement of the more than one person in the crime and he had admitted that. Since P.W.2 is the only eye witness to the crime he did not examine any other witness. He never threatened P.W.2 to disclose what he (the accused) alone said. P.W.3's evidence is false. P.W.4's evidence is false. However P.W.4 had admitted his signature in the summons served on the panchayatdars for inquest. He had also admitted his signature in the inquest report. The evidence of P.Ws.5 and 6 are false. P.W.7's evidence is also false. P.W.7 produced Sundaram alias Sundarasamy before him (the accused) on 27.12.1995 along with his confession statement. P.W.8's evidence is false. P.W.8 had admitted his signature in the recovery Mahazar prepared pursuant to the confession statement of Sundarasamy. P.W.9 is speaking false hood. P.W.10 is also speaking false hood. The accused does not have any personal knowledge about the evidence of P.W.11. However P.W.11 had spoken in public meeting that Sundarasamy is innocent and therefore re-investigation is necessary. P.W.12's evidence is false. Ex.P.18 was prepared by the Sub Inspector of Police. P.Ws.13 and 15 are speaking false hood. The accused does not know about the evidence of P.W.14. P.W.16's evidence is correct. She is the finger print expert. P.W.17's evidence is false. The accused does not remember of having examined P.W.18. P.W.19 is speaking false hood. The accused does not know anything about P.W.20's evidence. P.Ws.21 and 22 are speaking false hood. The accused does not know anything about P.W.23's evidence. P.W.24 helped in the preparation of the rough sketch. P.W.25 is speaking false hood. The accused was investigating the crime from 23.12.1995 till 23.3.1996 and thereafter the investigation was done by the succeeding police officer by name Pichai. The said Pichai examined the medical expert and other witnesses and filed the final report. Pichai is not made either as an accused or cited as a witness. When the final report against Sundarasamy was filed, the accused was not in Coimbatore District at all and he was working at that time at Virudhunagar. The accused does not know the application filed by the investigating officer seeking permission to re-investigate. It appears P.W.25 was in court when the trial in the earlier sessions case commenced. P.W.25 approached the accused to help his relatives shown to have been involved in a murder case in Thazhavaipuram Police Station and since he (the accused) refused, P.W.25

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has hatred and only having that in mind, he had fabricated a false case against him. The very fact that P.W.25 admitted that he was shown as an accused only at the stage of the final report would itself show the hatred which P.W.25 has for him. He is totally innocent. He had conducted investigation strictly in accordance with law."

As noted earlier, seven exhibits have come to be marked on his side. Ex.D.1 is the statement of P.W.1 recorded on 5.4.1996 by P.W.20. Ex.D.2 is the evidence of P.W.1 in S.C.No.110 of 1998. Ex.D.3 is the signature of P.W.2 in the statement recorded by P.W.20. Ex.D.4 is the deposition of P.W.2 in S.C.No.110 of 1996. Ex.D.5 is the signature of P.W.3 in his statement recorded by P.W.20. Ex.D.6 is a sentence in para 2 in page 3 of Ex.P.15. Ex.D.7 is the statement of P.W.12 recorded under Section 164 of the Code of Criminal Procedure on 1.12.1999 by Judicial Magistrate No.IV, Coimbatore.

8. Mr.N.R.Elango, learned Additional Public Prosecutor for the State would argue that in this case all the ingredients of the offence under Section 201 I.P.C. stand fully established on the legal evidence available on record. According to him, right from the commencement of the investigation, the respondent, had decided to screen the real offenders and therefore with that view in his mind, he proceeded deliberately to prepare incorrect records. The learned Trial Judge in acquitting the accused had definitely failed to advert to various legal evidence available on record connecting the accused with the crime, which had resulted not only in the erroneous and unreasonable judgment but also resulted in miscarriage of justice. Though there may be no direct evidence on record that the accused knew, who the real offenders are, yet from the very fact that the accused started preparing incorrect records from the commencement of the investigation itself and the other circumstances available in this case, would definitely enable this court to infer/presume that the accused knew, who the real offenders are, as otherwise there was no need for him to prepare incorrect records. Therefore the argument is that on the legal evidence available on record only one conclusion could be reached - it being that the accused is definitely guilty. According to him when there is no possibility of two different views on the same set of evidence and if the court below had failed to take the only view possible on the same set of evidence, then this court would be justified in interfering with the judgment in challenge. The learned Trial Judge appears to be under the impression that in addition to the investigation done by the respondent herein another police officer by name Pichai, Inspector of Police also had done some investigation. This is factually wrong. In elaborating all the submissions referred to above, learned State Counsel took us through the entire records. Opposing his submission, Mr.K.V.Sridharan, learned counsel appearing for the respondent would argue that from the materials available on

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record it cannot be concluded that the accused knew, who the real offenders are. On the other hand, his investigation by examining the witnesses revealed that Sundaram alias Sundarasamy alone is the accused involved in the case of rape, murder and erasing the evidence. From the materials available on record, it could be safely concluded that the investigation went on the right lines and therefore the accused cannot be convicted at all for the offence under Section 201 I.P.C. Enlightening this court on its power as an Appellate Court while hearing an appeal against acquittal, learned counsel for the defence would contend that unless this court holds that the judgment under challenge is perverse or the reasons given therein are palpably wrong or this court finds that there is miscarriage of justice, this court would not be in a position to interfere.

9. Having regard to the submissions made by the learned counsel on either side, we went through the entire records. Before proceeding to analyse the merits and de-merits of the prosecution case and on the merits and de-merits of the arguments advanced by the respective learned counsel on either side, we want to remind ourselves as to what are this Court's power, when this court hears an appeal against acquittal. A Constitution Bench of the Supreme Court, in the judgment reported in AIR 1963 SC Pg.200 (M.G.Agarwal Vs. State of Maharashtra), while dealing with the powers of the appellate court hearing an appeal against acquittal, had laid down the law as hereunder:

> "Thus, though the powers of the High Court in dealing with an appeal against acquittal are as wide as those which it has in dealing with an appeal against conviction, in dealing with the former class of appeals, its approach is governed by the overriding consideration flowing from the presumption of innocence. Sometimes, the width of the power is emphasized, while on other occasions, the necessity to adopt a cautious approach in dealing with appeals against acquittals is emphasized and the emphasis is expressed in different words or phrases used from time to time. But the true legal position is that, however circumspect and cautious the approach of the High Court may be in dealing with appeals against acquittals, it is undoubtedly entitled to reach its own conclusions upon the evidence adduced by the prosecution in respect of the guilt or innocence of the accused.
>
> The test suggested by the expression "substantial and compelling reasons" for reversing a judgment of acquittal, should not be construed as a formula which has to be rigidly applied in every case, and so, it is not necessary that before reversing a judgment of acquittal, the High Court must necessarily characterise the findings recorded therein as perverse."

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Again, the Supreme Court, in the judgment reported in 1977 Crl.L.J.Pg.613 (Rajendra Prasad Vs. State of Bihar), while dealing with the powers of the appellate court, held as follows:

> "When a trial court, with full view of the witnesses, acquits an accused after disbelieving direct testimony, it will be essential for the High Court, in an appeal against acquittal, to clearly indicate firm and weighty grounds, from the record, for discarding the reasons of the trial court in order to be able to reach a contrary conclusion of guilt of the accused. The High Court should be able to point out in its judgment that the trial court's reasons are palpably and unerringly shaky and its own reasons are demonstrably cogent. As a salutary rule of appreciation of evidence, in an appeal against acquittal, it is not legally sufficient that it is just possible for the High Court to take a contrary view about the credibility of witnesses but it is absolutely imperative that the High Court convincingly finds it well-nigh impossible for the trial court to reject their testimony."

Recently, the Honourable Supreme Court of India in the judgment reported in AIR 2007 Supreme Court Weekly page 1302 (State of Madhya Pradesh V. Bacchudas) held as hereunder:-

> "There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate Court to re-appreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not (see Bhagwan Singh V. State of M.P. 2003 (3) SCC 21). The principle to be followed by the appellate Court considering the appeal against the judgment of acquittal is to interfere only when

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there are compelling the substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference. These aspects were highlighted by this Court in Shivaji Sahabrao Bobade V. State of Maharashtra (1973(2) SCC 793); Ramesh Babulal Doshi V. Sate of Gujarat (1996 (9) SCC 225); Jaswant Singh V. State of Haryana (2000 (4) SCC 484); Raj Kishore Jha V. State of Bihar (2003(11) SCC 519); State of Punjab V. Karnail Singh (2003 (11) SCC 271); State of Punjab V. Phola Singh (2003(11) SCC 58); Suchand Pal V. Phani Pal (2003 (11) SCC 527) and Sachchey Lal Tiwari V. State of U.P. (2004 (11) SCC 410)."

The above referred to judgments of the Supreme Court clearly spell out the powers of the Appellate Court in hearing an appeal against acquittal. Having that principle in our mind, we proceeded to analyse the entire materials on record.

10. From now on where ever there are expressions as A.1, A.2, A.3, A.4, A.5 and A.6, they are referrable to the array of parties shown in the final report leading to the culmination of S.C.No.96 of 2000 and those who were actually tried in that case. The crux of the prosecution case and even as per the charge is that when the accused was incharge of the investigation in Crime No.81 of 1995 on the file of the then investigating police station for the period from 23.12.1995 till 23.3.1996, he, knowing full well, who the real offenders are, created incorrect records right from the commencement of the investigation with an intention to screen the real offenders and therefore triable under Section 201 I.P.C. Therefore to find out whether the accusation stands proved or not, this Court has to sift the materials on record to find out whether either there is direct evidence to show that the accused knew, who the real offenders are or if there is no direct evidence, can this court from the established circumstances, infer that fact against the accused? For that it has to be necessarily seen whether any of the records prepared by the accused during investigation are incorrect and if so, do they lead to the conclusion that the accused with the intention of screening the offenders had prepared such incorrect records to be placed before the court of law? It is also necessary for this court to decide whether in conducting the investigation on material aspects, the accused alone had played a part or his succeeding police officer also had played a part and if it is held that the succeeding police officer also had placed a vital part in the material portion of the investigation, then, who could be prosecuted for the offence under Section 201 I.P.C ? Let us take the last question for decision first. The charge itself reads that the accused was in charge of investigation from 23.12.1995 till 23.3.1996 in Crime No.81 of 1995 which stands

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registered on 23.12.1995 on the death of a young girl under the caption "suspicious death"/under Section 174 of the Code of Criminal Procedure. Inspector of Police by name Pichai is admittedly the police officer, who succeeded the accused in the police station. P.W.21 is the Head Constable on duty in the then investigating police station. Ex.P.28 is the copy of the report sent by Inspector of Police by name Pitchai to the Commissioner of Police. We have already noted that there was a general disagreement in the society that the earlier investigation in the murder case was not on the right direction and therefore the higher ups directed re-enquiry to be conducted and thus P.W.20, the Crime Branch Inspector of Police, conducted the enquiry and sent his report. Inspector of Police - Pitchai, had sent his report (i.e.) Ex.P.28 on the status position in Cr.No.81 of 1995 and it shows the following:-

> " The case diary in the investigation done by the then Inspector of Police was received at his police station on 23.3.1996; when he perused it he found that the then Inspector of Police had examined P.Ws.1 and 2 (who are also examined as P.Ws.1 and 2 in the present case) and several other witnesses (i.e.) in all twenty witnesses and their statements are already on record; it also records that some more witnesses were also examined on 24.12.1995 and on the day when the case diary was received from the then Inspector of Police, the Chemical Examiner's Report alone was awaited, which was received at the police station on 31.7.1996; then after collecting the final opinion from the Doctor, who did post-mortem, the papers were submitted to the Additional Public Prosecutor of Coimbatore and then after obtaining his opinion, the final report was filed on 28.8.1996."

Ex.P.28 is in response to various communications originating from the head office - the first one dated 8.8.1996. At the foot of Ex.P.28 the Assistant Commissioner of Police, Law and Order (Central), Coimbatore had made an endorsement, before forwarding it to the higher ups that on the final report filed on 28.8.1996, the court is yet to take the case on file. Ex.P.28 stands marked and proved through P.W.14, who is working as an Assistant in the office of the Commissioner of Police, Coimbatore. We have already referred to his evidence. From the contents of Ex.P.28 it is clear that Pitchai - the Inspector of Police, who succeeded the accused in this case, had not done any investigation on the material aspects at all and what all he had done before filing the final report is, collecting Chemical Examiner's Report; final report from the Doctor, who did post-mortem and getting the opinion of the Additional Public Prosecutor. Therefore the argument advanced before the Lower Court on behalf of the accused and reiterated herein that Pitchai - the Inspector of Police had also done substantial investigation on material aspects and therefore it is not

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possible to fix the responsibility on the accused alone, do not appeal to us at all. Therefore the learned Trial Judge is definitely wrong in holding that in the investigation originally done culminating in S.C.No.110 of 1998 besides the accused, one other person had also done the investigation. In other words, we reiterate that Pitchai, the succeeding Inspector of Police had not done any investigation in it's real sense at all and what he had in fact done is reflected in Ex.P.28, about which we have already referred to.

11. The learned Trial Judge appears to be under the impression that since in S.C.No.96 of 2000 the very same court had acquitted all the accused therein tried under Section 376, 302 and 201 I.P.C. (A.1) and 120-B and 201 I.P.C. (A.2 to A.5), the present prosecution may not survive. The learned Trial Judge rejected the submission made by the State before her that in the event of the acquittal of the accused in S.C.No.96 of 2000, the charge against the present accused under Section 201 I.P.C. would survive for consideration, giving certain reasons. The sum and substance of the reasons given there for are as hereunder:-

> " The final report filed against Sundaram alias Sundarasamy alone is on the basis of the investigation done by more than one person; the earlier sessions case was not allowed to be decided on merits by obtaining permission for re-investigation; in S.C.No.96 of 2000 all the accused tried therein were acquitted and therefore the State shall not be allowed to maintain the prosecution against the Inspector of Police under Section 201 I.P.C. ,observing that the judgment of the Supreme Court reported in 2001(1) Law Weekly Criminal 211 (Balbir v. State of Haryana and another) was rendered in a different context altogether and yet applying the same logic, it must be held that unless a verdict of acquittal is given against Sundaram alias Sundarasamy - the sole accused in S.C.No.110 of 1998 or unless the Court finds the accused put up for trial in S.C.No.96 of 2000 are the real offenders, there is no question of the court deciding that the present accused had done investigation in such a manner to screen the real offender."

However the learned Trial Judge did not base her judgment in acquitting the accused on the above referred to discussion alone, but proceeded to decide the case against the present accused on its own merits.

12. Thereafter the learned Trial Judge proceeded to find out whether the accused created any false evidence knowing the real offenders when he was in charge of investigation from 23.12.1995 to 23.3.1996. Before going into the correctness or otherwise of the approach of the learned Trial Judge in deciding the above issue, let

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us find out whether from the materials available on record could it be decided without any hesitation that the accused had framed incorrect records, knowing the real offenders, to show them their escape route? P.W.2 is examined as an eye witness to the crime. His evidence if properly evaluated, would be of a telling nature, is our considered opinion. We have already extracted in the earlier portion of this judgment his evidence – both in chief and in cross. In sum and substance his evidence shows that at or about the time of the occurrence, he initially saw the wire food basket of the deceased at the threshold of the spinning mill and later, after a lapse of time, it was not seen there. His evidence also shows that he was taken to the police station on the following Sunday (the occurrence was on Friday) . His evidence shows that he was summoned by the mill owners and he was taken in the mill owner's car to the then investigating police station and enroute he was told that if he is asked about any incident in the mill, he must plead total ignorance. His evidence also shows that when he entered the police station he saw the respondent there and after making some preliminary enquiries the accused/the respondent asked him as to whether the deceased had come for duty on that day. He had also stated that not knowing what to answer he put his head down. Therefore up to this stage, it is clear that he was under the exclusive control of the mill owners, who traveled with him in the car. What happened thereafter is really a serious matter. After sending for Sundaram alias Sundarasamy inside the police station, the accused had made some more enquiries and at that time A.1, A.2 and their relatives were there. P.W.2 would also state that two days thereafter he was taken to a room in the upstairs in the police station, where he was detained for two or three days and A.1,A.2 and their close relatives were also there. His evidence shows that the accused asked him as to whether he knows to read and when he answered in the affirmative, the accused made him to read what is written in a paper which he gave it to him. His evidence also shows that he read that statement twice or thrice and the accused threatened him that thereafterwards the witness must divulge only what he had read in the paper and if he deviates, he would also be put inside along with Sundaram alias Sundarsamy. P.W.2 would state that therefore accepting that he had signed. Therefore from the evidence of P.W.2 it is clear that even around noon time on 24.12.1995 or by late afternoon on that day the accused/the respondent gave a clear indication of his mind as to how he is going to proceed with the investigation. Of course P.W.2's evidence in cross examination shows that till he gave evidence in this case, he had not divulged those facts to anybody else. P.W.2 had stated that when he was taken before P.W.20, A.1 and A.2 told him to divulge only what he was earlier told in the police station. P.W.2 would add that since his employers were there, he told P.W.20 that he did not know anything. In this context we may also just refer to the evidence of P.W.2 which would definitely show that up to the time he gave evidence in the earlier sessions case, he was under the control of his employers. Just to refresh our

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memory we will summarise hereunder as to what he stated in that regard:

> "Two days before the court proceedings I was asked to see their lawyer; A.1 took me to their lawyer two days before; on entering I was told that I need not have any connection with the incident; I need not have any connection with the mill owners and whatever may be the questions in court, I must say that I do not know anything."

P.W.2 had also deposed that agreeing to the suggestion he left and on the day of the trial also he was taken by the mill owners in their car, who made him sit in a place which was not to be seen by the police.

13. Ex.P.42 is the inquest report. The inquest is shown to have been conducted between 9.00 p.m. on 23.12.1995 till 1.00 a.m. in the following morning. The inquest report shows that P.Ws.1 and 2 in this case were also examined during inquest. The names of the panchayatdars, as witnesses to the inquest is also mentioned in Ex.P.42. All of them have been examined before the court in this case. Each one of them stated that they did not witness the inquest and their signatures as witnesses to the inquest in the records were taken in the police station. Since in our opinion nothing turns on that, we leave it as it is. In the inquest report the accused – who had admittedly conducted the inquest, had made it appear that Sundaram alias Sundarasamy – the sole accused in S.C.No.110 of 1998 had committed the offence in the field land adjoining the well. In other words, the occurrence had not taken place inside the mill. Column 4 of the inquest report shows that P.W.1 alone saw the victim alive at about 6.30 p.m. on 22.12.1995 and this eliminates the presence of P.W.2 as an eye witness to the crime. In column 9 of the inquest report it is disclosed that the statement of P.W.2 revealed that Sundaram alias Sundarasamy was outraging the modesty of the deceased on many occasions, which had been seen by P.W.2. It is further disclosed in column 9 of the inquest report that the said Sundaram alias Sundarasamy had disclosed to P.W.2 a couple of hours prior to the crime that he is going to have sexual pleasure with the victim and the said Sundarasamy had come across P.W.2 at about 8.30 p.m. on that night and disclosed as hereunder:-

> "I picked up the victim girl from near Venkatesa Mill and took her to the nearby land, where I raped her; strangulated her by a rope and then dumped the body in a nearby well."

In column 15 of the said inquest report namely, Ex.P.42 we find that elaborate details as to how exactly the crime had come to be committed

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by Sundaram alias Sundarasamy are given. We just extract hereunder the details available in column 15 of Ex.P.42 disclosing the manner in which the crime had come to be committed:-

> " Sundaram had picked up the victim girl from Venkatesa Mill and then took her to a nearby land belonging to Arukutti where he had intercourse with her. The victim protested and refused and yet, he had sexual intercourse with her. Therefore the victim said that unless she is left alone, she would tell her mother and despite that he (Sundaram alias Sundarasamy) proceeded to complete the sexual intercourse. Then fearing that if the victim exposes him in the village, he would be put to shame and that he would be exposed to danger in the hands of the family members of the victim, strangulated her by a rope and then threw her dead body in the well situated in the lands belonging to Rangasamy Gounder."

Therefore from the contents of the inquest report as referred to above the Court could conclude that the accused wanted to make it appear that Sundaram alias Sundarasamy is guilty of rape, murder and erasing the evidence of offence. We find from Ex.P.42 that it had reached the Magistrate at 9.30 a.m. on 24.12.1995. Ex.P.42 records that Sundaram alias Sundarasamy had made an extra judicial confession to P.W.2 even at 8.30 p.m. on 22.12.1995. If that is so, we fail to understand as to why P.W.2 did not tell about that to P.W.1 at least immediately after that, so that P.W.1 would have been in a position to pass on that information to the investigating officer namely, the accused. P.W.1 would state that on 23.12.1995 when she asked P.W.2 as to whether he knew about her daughter, he answered that one day he would tell her. In our considered opinion if A.4 is the accused there was no need at all for P.W.2 to be evasive. Does this evasiveness of P.W.2 lead to infer that some one is trying to protect some one. P.W.2 has no stakes at all in protecting the real offender. Therefore it is sure that somebody else is behind P.W.2 which made him to be evasive at that time. Therefore we conclude at this stage that from Ex.P.42 it is made to appear that Sundaram alias Sundarasamy alone is accused of the offences perpetrated against the deceased in this case and to P.W.2 Sundarasamy had made an extra judicial confession. P.W.3's evidence shows that (see the cross examination) that around 6.30 p.m. on 23.12.1995 the said Sundaram alias Sundarasamy and his relatives met him on their way home and within fifteen minutes thereafter Sundaram alias Sundarasamy returned from his house and when questioned he answered that he came back because police is already in his house. We have already extracted his evidence earlier. P.W.3's evidence also shows that immediately thereafter, Sundarasamy took him in his cycle to the then investigating police station where leaving P.W.3 outside the police station Sundaram alias Sundarasamy went inside and he did

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not come out for almost half an hour, which made P.W.3 leave the police station. He would also state that around 12.00 in the night he was also taken to the police station with the owner's son (A.1) by two policemen to the then investigating police station. We searched the entire records to find out whether Sundaram alias Sundarasamy, who reached the police station on the evening of 23.12.1995 was seen again anywhere in the village free from the custody of the police but in vain. In other words, there is no evidence on record to show that Sundaram alias Sundarasamy, who reached and entered the police station around 7.00 p.m. on 23.12.1995 had come out at all thereafter. If this is so and if the contents of the inquest report showing the involvement of Sundaram alias Sundarasamy is true, then we fail to understand as to why the accused had not arrested him at all. A duty is cast upon the accused to explain to the court as to what happened to Sundaram alias Sundarasamy, who reached the police station as referred to above on the evening of 23.12.1995 and except denying the evidence of P.W.3 as false he had not taken any other step in regard there to to prove the contra. As noted earlier, the above referred to evidence of P.W.3 that Sundaram alias Sundarasamy entered the police station is elicited by the accused when he cross examined P.W.3, when the witness was totally silent on that aspect, in his evidence in chief.

14. According to the accused, P.W.7 surrendered Sundaram alias Sundarasamy in the police station on 27.12.1995. When questioned under Section 313 of the Code of Criminal Procedure, the accused stated that P.W.7 produced the accused/Sundaram alias Sundarasamy along with his report Ex.P.9 in the police station. The accused made it appear that on such surrender, Sundaram alias Sundarasamy was arrested and examined, during which time he gave a confession statement marked in this case as Ex.P.44. Let us now consider whether this facet of the prosecution case as sought to be made out by the accused (the Inspector of Police), when he was incharge of investigation is true or not? We have already referred to the evidence of P.W.7 earlier. P.W.7 deposed in his evidence that he was sent for to the police station where the accused (Inspector of police) asked him to give a report indicating that Sundaram alias Sundarasamy surrendered before him (i.e.) P.W.7. Though he initially refused, yet, he gave the report. When P.W.7 himself do not speak that the accused compelled him to give such a record, we fail to understand as to how his failure to disclose earlier that he was compelled to create such a record could be of any significance at all. As noted earlier, P.W.7's evidence shows that he was summoned to the police station on 27.12.1995 wherein the Inspector of Police/the accused asked him to give a report that Sundaram alias Sundarasamy surrendered and though he initially refused and yet, he reduced into writing what the Inspector of Police (the accused) told. PW.7's evidence shows that he was told to prepare a report that Sundaram alias Sundarasamy surrendered on 27.12.1995 and Ex.P.9 is the said report. He would

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also affirm that the said accused (Sundaram alias Sundarasamy) never surrendered before him; he did not in turn surrender the accused (Sundaram alias Sundarasamy) in the police station but however the said accused (Sundaram alias Sundarasamy) was already in the police station. As noted earlier at all early stages and the witness (P.W.7) accepting the same except suggesting to him that he had not disclosed on the lines referred to earlier, no other worthy cross examination had been made to discredit his evidence as spoken to by him now in court. P.W.7 had also stated that thereafter the Head Constable (P.W.21) recorded the confession statement of the accused, in which he had signed. We perused Ex.P.9. It is a lengthy report containing plenty of details about the family of Sundaram alias Sundarasamy; his employment and the manner in which he came to commit the crime. P.W.7 had given evidence that to the narration of the accused/ Inspector of Police, he reduced into writing and it is Ex.P.9. There is nothing on record to show that P.W.7 had reduced into writing, any confession statement of Sundaram alias Sundarasamy. Therefore having the experience which we have in dealing with criminal cases, when we perused the contents of Ex.P.9, we have no doubt at all that it would not have been possible for P.W.7 to retain so many facts in his mind and then re-produce it in the chronological manner as he is shown to have done in his report Ex.P.9. In other words, unless a person dictates such a lengthy material, it would not have been possible for anybody to give such a lengthy report on his own giving all the details of Sundaram alias Sundarasamy.

15. The falsity of Ex.P.9 as a voluntary report given by P.W.7 is also apparent from that statement itself and we reflect our mind on that hereunder:-

> " P.W.8 had stated that when he was in the police station on 27.12.1995, he saw a wire basket and two tiffin boxes on the Inspector's table and they are M.Os.8, 11 and 12. On this material evidence he had not been cross examined at all. P.W.21 is the Head Constable in the said investigating police station. He would also state that on the day when he recorded the confession statement of Sundaram alias Sundarasamy he saw the other accused (he must definitely mean the accused put up for trial in S.C.No.96 of 2000 since as per the original final report, there was only one accused) and that he also saw the wire basket and tiffin boxes on the Inspector's table. He identified them as M.Os.8,11 and 12. Once again we find that this witness was also not cross examined on the above material aspect namely, the availability of M.Os.8,11 and 12 on the Inspector's table. Therefore the prosecution had definitely established that even on

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27.12.1995 M.Os.8,11 and 12 which were in the possession of the victim in this case on the date of occurrence, were available, in specie, on the Inspector's table. Now we go back to Ex.P.9 - the so called report given by P.W.7 on surrendering Sundaram alias Sundarasamy and Ex.P.44 the confession statement of Sundaram alias Sundarasamy recorded on 27.12.1995. Ex.P.9 discloses that after committing the murder Sundaram alias Sundarasamy concealed the wire basket; an eversilver tiffin box; a small eversilver box; a plastic bag; a comb and the slippers available at the place where he had sexual intercourse with the victim, in the underground water and air cement exhaust pipe. Ex.P.44 is the statement of the accused recorded under Section 27 of the Evidence Act by P.W.21 from Sundaram alias Sundarasamy on his alleged surrender by P.W.7 in the police station. Ex.P.44 shows that it was recorded at 2.15 p.m. on 27.12.1995 and there also Sundaram alias Sundarasamy disclosed the concealment of the articles referred to above in the place as referred to in Ex.P.9. Therefore one thing that is clear from the contents of Exs.P.9 and P.44 is that M.Os.8,11 and 12 were concealed by Sundaram alias Sundarasamy in a place known to him only. If that is so, the recovery of M.Os.8,11, and 12 could have been only any time after 2.15 p.m. on 27.12.1995. If that is the only conclusion that could be arrived at based on Exs.P.9 and P.44, then it is not possible to reconcile as to how M.Os.8,11 and 12 were found on the Inspector's table (the accused) on that day itself, when P.W.7 is stated to have surrendered Sundaram alias Sundarasamy in the police station. There is no recovery Mahazar for M.Os.8,11 and 12. Assuming for a minute that the present prosecutor had deliberately suppressed it - which we do not say - then nothing prevented the accused from establishing that the recovery was made only pursuant to Ex.P.44. A question had been put to P.W.21 in his cross examination as to whether he knew that Sundaram alias Sundarasamy, pursuant to his confession statement, had produced any articles and he answered that he did not know. This question is a mischievous question since admittedly, the evidence do not show that Sundaram alias Sundarasamy had M.Os.8,11 and 12 with him on the day when he was surrendered by P.W.7 in the police station and the concealment of the above articles had come to surface only when Ex.P.9 is received by the police and the confession statement

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of Ex.P.44 of the accused came to be recorded. The accused/Inspector of Police had not even chosen to deny the presence of M.Os.8,11 and 12 in his table on 27.12.1995. Therefore a duty is cast upon him to establish as to how and when M.Os.8,11 and 12 had come to be recovered, which he had not done. "

Therefore it is clear to our mind that the accused herein had definitely created incorrect records (i.e.) getting Ex.P.9 showing that P.W.7 surrendered Sundaram and Ex.P.44 - his statement recorded under Section 27 of the Evidence Act by P.W.21 totally forgetting that the presence of M.Os.8,11 and 12 on his table even on that day would expose him.

16. Again on M.Os.8,11 and 12 we have to give our critical assessment. P.W.16 is the finger print expert. She would state that on 27.12.1995 an eversilver tiffen box was received at her laboratory to take chance prints available therein and accordingly on examination, she lifted three chance prints, for which she assigned the marks Y.1, Y.2 and Y.3. Her evidence also shows that specimen finger prints of the accused/Sundaram alias Sundarasamy was compared with the chance prints lifted and both tallied with each other. Ex.P.32 is her report and it is dated 27.12.1995. It shows that the slip containing the finger print of Sundaram alias Sundarasamy was received by her on 27.12.1995. Ex.P.33 is the paper containing the finger prints of the suspected accused. Ex.P.33 shows that the finger prints were lifted on 27.12.1995 by Grade - I Police Constable. It is an established procedure and requirement of law - atleast as far as Courts in this State are concerned, that the incriminating objects recovered by the investigating officer during investigation shall always sent to the court with a requisition to send the same to the laboratory for chemical examination or Expert's opinion. We have already noted that M.Os.8,11 and 12 were available on the Inspector's table on 27.12.1995. There is nothing on record to show that when they were recorded and whether M.Os.8,11 and 12 were sent to the laboratory through court. In fact, it could not have been done in that manner because P.W.16's evidence shows that on 27.12.1995 itself she received the incriminating objects. How Ex.P.33 reached the finger print bureau is again a mystery? The accused/the respondent had not explained as to how they were sent to P.W.16. The constable, who is stated to have lifted the finger prints of Sundaram alias Sundarasamy is also not examined by the defence. The accused alone is aware about those facts and therefore a duty is cast upon him to establish the above facts, which he had again failed. Therefore the possibility of M.Os.8,11 and 12 and the finger print slip being sent to the laboratory directly by the accused/the respondent though a special messenger cannot be totally ruled out. Ex.P.34 is another report from the very same finger print bureau and it is also dated 27.12.1995. It affirms in writing that the eversilver tiffin box was received by

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their laboratory from the police station on 27.12.1995. Therefore it is clear that M.Os.8,11 and 12 and the finger print slip Ex.P.33 were not sent to the finger print bureau through court. Why the accused/the respondent had deviated from the established procedure of sending the articles through court is a mystery. In other words, he (the accused) appears to have done so obviously having a design in his mind, as otherwise it is unexplainable. P.W.21, the Head Constable working under the accused at that time had also deposed that M.Os.11 and 12 were found cleanly washed. Once again we find that this witness had not been cross examined at all on that material aspect. P.W.16, the finger print expert also stated in her evidence as hereunder:-

> "If the tiffin box is washed or wiped, then all the finger prints available therein would vanish; when I saw the tiffin box, I did not notice any food inside, not even spoiled food ; however it was clean and it was found to have been cleanly washed."

The accused had not even cross examined P.W.16 on any part of her evidence and he had admitted when he was questioned under Section 313 of the Code of Criminal Procedure that the evidence of P.W.16 is true. On the above referred to materials, a suspicion - a strong one - enters our mind (i.e.) whether the accused was framing incorrect records? We discuss hereunder:-

> "Sundaram alias Sundarasamy in his confession statement Ex.P.44 had not stated that he had washed M.Os.11 and 12 before concealing. There is no evidence on record to show that those incriminating objects came to be recovered pursuant to the confession statement of the accused/Ex.P.44. There is also no evidence to show that at the time of the alleged recovery, M.Os.11 and 12 were found cleanly washed. We have already noted from the evidence that M.Os.11 and 12 along with M.O.8 were available on the Inspector's table on 27.12.1995 itself. If that is so, who washed M.Os.11 and 12. According to us, a duty is cast upon the accused to explain this, which he had not done. Then we applied our mind as to whether there is any reason at all for washing M.Os.11 and 12 and the answer that immediately comes to our mind is, namely, in order to screen the real offenders and fix Sundaram alias Sundarasamy alone as the accused, the vessels might have been washed. The possibility of the accused either himself washing M.Os.11 and 12 or having it washed by any other person in the police station; then asking Sundaram alias Sundarasamy to handle those tiffin boxes and

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then sending it to the finger print bureau to get the incriminating material against the said Sundaram alias Sundarasamy stand to reason and such a modus operandi cannot be totally ruled out."

17. We have already referred to the contents of Ex.P.42, the inquest report Ex.P.9, the surrender report stated to have been given by P.W.7 containing the disclosures stated to have been made by Sundaram alias Sundarasamy to him and Ex.P.44, the confession statement of Sundaram alias Sundarasamy itself recorded under Section 27 of the Evidence Act. The inquest report gives a detailed account as to how Sundaram alias Sundarasamy came to pick up the victim; made sexual assault on her; the manner in which the victim protested; how he succeeded in completing the sexual assault; strangulating her to death and then throwing the dead body into the well. The inquest report was prepared on 23.12.1995 and it had reached the court on 24.12.1995 at 9.30 a.m. Those finer details of the crime are found fully reflected in Ex.P.44, the confession statement of Sundaram alias Sundarasamy, which had come on record for the first time only on 27.12.1995. Almost similar details have come in Ex.P.9. We have already doubted earlier on sound reasons, the contents of the inquest report that Sundaram alias Sundarasamy had made the extra judicial confession to P.W.2. In other words, from the evidence of P.W.2 in Court and the evidence of the other witnesses we do not get any material to hold that Sundaram alias Sundarasamy had made any extra judicial confession to P.W.2 at about 8.30 p.m. on 23.12.1995. If that is so, then, but for Exs.P.9 and P.44 the accused could not have got those details. Ex.P.44 had reached the court on 28.12.1995. We have already concluded on the evidence of P.W.3 that Sundaram alias Sundarasamy, who had reached the police station in the company of P.W.3 on the evening of 23.12.1995 was not to be seen thereafter by anybody till for the first time he is shown to have emerged before the accused in the police station on 27.12.1995. Therefore it is easy to bring the loose ends together to conclude that the accused had Sundaram alias Sundarasamy in his custody form the evening of 23.12.1995 and that he did not come out at all thereafter. Though we might have discussed this issue in some other portion of this judgment, yet, at the risk of repetition, we want to reiterate our discussion hereunder:-

"The disclosure made in Ex.P.44, the inquest report that A.4 had confessed to P.W.2 at 8.30 p.m. on 22.12.1995 that he is involved in this crime is apparently false. We have given reasons for holding so. If really such a disclosure was made by A.4 to P.W.2 at 8.30 p.m. on 22.12.1995 then we see no reason as to why P.W.2, should hold back that information in the following days to come. Evidence on record shows that P.W.2 had come across P.W.1 on the next day after she found the dead body in the well

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and whenever she asked P.W.1 as to whether he (P.W.2) knows anything about that P.W.2 was evasive. P.W.1's evidence is that when questioned, P.W.2 told her that he would disclose it on one day. The very evasiveness of P.W.2 on the lines indicated above raises a suspicion in our mind as to why he must evasive if anybody else other than A.4, who is a mill worker in Sundaram Mills is the accused. The reasons are far off to be seen namely, some force must be working behind P.W.2 and that force is none else than A.1, A.2 and their relatives. Therefore without any hesitation, we hold that the disclosure made in Ex.P.44 that A.4 confessed to P.W.2 at 8.30 p.m. on 22.12.1995 about his involvement in the crime is patently false. If that is so, then the finer details disclosed in Ex.P.44 about the manner in which the crime came to be committed by A.4 also could not have been available with the accused namely, the respondent herein. Exs.P.9 and P.42 as per record have come into existence only on 27.12.1995 and the finer details contained in those two documents as to how the crime came to be committed, are found incorporated in Ex.P.44. Ex.P.44 admittedly had reached the court at 9.30 p.m. on 24.12.1995. If we carefully analyse the entire sequence of events, it is clear to our mind that the accused had definitely designed to help the real culprits and that is how even in the inquest report he had put forward an imaginary story involving A.4 in the crime without little realising that if the contents of the inquest report on the above lines are found to be without any basis ,then he would be in the soup. The accused had laid trap for himself without realising the above folly."

18. Let us address ourselves as to whether the accused knew who the real offenders are. This issue has to be decided either by direct evidence or by circumstances established in this case. P.W.4 in his evidence would state that Rathinam (A.1 in S.C.No.96 of 2000) is his friend and therefore on the day following the occurrence he had gone to the police station to see Rathinam. We may note here that the occurrence was on the evening of 22.12.1995. His evidence discloses that the Inspector of Police (the accused) asked him to sign and when he asked him to why he must sign, the Inspector of Police told him that since he is the friend of Rathinam, he can sign and accordingly he signed. When he was cross examined, he affirmed that since Rathinam was his friend, he had gone to see him in the police station. We carefully went through his evidence and we are definite that P.W.4's evidence establishes the presence of Rathinam in the police station even on 23.12.1995. Unless Rathinam's involvement in the crime is suspected by the accused, in our considered opinion, there was no need for the accused to interrogate him and ask P.W.4 to sign in a record in the police station. No worthy cross examination of this witness was

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done by the defence, to disbelieve his evidence that on 23.12.1995 he saw Rathinam (A.1) in the police station and at the instance of the accused/the Inspector of Police he had signed in the record. P.W.2 is eye witness for the occurrence proper. His evidence shows (we have already referred to it earlier) that around 12.00 in the morning of 24.12.1995 when he was grazing the cattle he was summoned by the mill owners and in the company of A.2's father and others he went to the police station. He would also state that when he entered the police station A.1 and A.2 came out of the police station. Pausing here for a minute this evidence of P.W.2 that when he entered the police station on 24.12.1995 he saw A.1 and A.2 coming out of the police station is definitely corroborated by the evidence of P.W.4, who would state that the police officer/the accused asked him to sign in a record on 23.12.1995 since he was the friend of Rathinam. Therefore it is legally possible to infer that on P.W.4 signing the record in the police station, the accused had allowed Rathinam to go out, obviously binding him over to appear before him as and when called for, as otherwise A.1 and A.2 coming out of the police station on 24.12.1995 cannot be explained at all. P.W.2's evidence again shows that when he was examined inside the police station by the Inspector of Police/the accused A.1, A.2 and others were also there. His evidence also shows that two or three days thereafter he was taken to a room in the upstairs in the police station, where he was kept in confinement for two or three days and during that time, A.1, A.2 and their relatives were also there. Therefore it is clear from the evidence of P.W.4 and P.W.2 that Rathinam might have been summoned by the police for interrogation on 23.12.1995 and he continued to be under the surveillance of the police for about two or three days even after 24.12.1995. A.2 also is shown to be present in the police station for two or three days along with A.1. Even when P.W.2 was examined by P.W.20, A.1 and A.2 also had gone with him. It may be noticed in this context that the accused had not pinpointedly cross examined P.W.2 on the presence of A.1 and A.2 in the police station. In this context we may also refer to the evidence of P.W.15, whose evidence shows that he is acquainted with Rathinam (A.1 in S.C.No.96 of 2000) for quite sometime and he reached the investigating police station at six hours on 23.12.1995 and Rathinam was kept there for interrogation. His evidence also shows that he was asked to sign by the police Head Constable as a witness and accordingly he signed. When he was cross examined he would state that he was asked to sign as a witness in the police station at 6.00 a.m. on 24.12.1995. He admits that in chief examination he had stated that he had reached the investigating police station at 6.00 p.m. on 23.12.1995. Whatever it is, in the absence of worthy cross examination of this witness on his evidence about the presence of Rathinam in the police station and the witness was asked to sign in the record for the release of said Rathinam, we have no doubt at all that P.W.15's evidence also establishes the presence of Rathinam in the police station either on 23.12.1995 or even on 24.12.1995. Therefore this court can legally

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conclude from the evidence of P.Ws.2,4and 15 that Rathinam and Dhanusu (A.1 and A.2 in S.C.No.96 of 2000) were in the mind of the Inspector of Police/the accused in connection with the crime. The continued presence of A.1 and A.2 in the police station, even after the completion of the inquest, which unerringly shows that A.4 alone is the offender, definitely reveals that the contents of the inquest report atleast so far the involvement of A.4 alone is incorrect. Therefore when there is direct evidence of P.Ws.2,4 and 15 establishing the presence of A.1and A.2 in the police station in which the accused was the investigating officer, a duty is cast upon him to disprove the same. But however, except denying the evidence of the above referred to witnesses as false, when he was questioned under section 313 of the Code of Criminal Procedure, as noted earlier, the accused had not taken any material steps to disprove their evidence.

19. In the face of the above materials noted by us, let us now analyse the reasons given by the learned Trial Judge for acquitting the accused. One of the ground highlighted by the prosecution against the accused is that he deliberately shifted the scene of occurrence from inside the mill premises to the open land near a well. P.W.1 is the mother of the deceased. She had given the complaint. She is not an eye witness to the crime. The dead body was admittedly found in the dry well. The complaint was registered in the late evening of 23.12.1995, since only on that day the dead body was found in the well. From the materials available on record and going by the reasons given by the learned Trial Judge we are of the considered opinion that nothing turns on the point referred to above and projected by the prosecution, since admittedly the complaint given by P.W.1 was registered only under section 174 of the Code. In this context we may note that the learned Trial Judge proceeded to disbelieve the prosecution case that deliberately the scene of occurrence was shifted and on the ground also that the prosecution case in S.C.No.96 of 2000 was disbelieved. Where exactly P.W.1 came to give the complaint leading to the registration of Crime No.81 of 1995 namely, whether it was by the side of the well in which the dead body was found or in the police station, also do not assume importance, since P.W.1 did not implicate in her complaint any particular person as the accused in the murder of her daughter as she is admittedly not an eye witness to the crime. Since we are of the view that for deciding this case, no weight could be attached to the place where P.W.1 had actually given the complaint, we are not attaching any importance to the reasons given by the learned Trial Judge to disbelieve P.W.12. It may be noticed that P.W.12 is the police constable, before whom P.W.1 is shown to have given the complaint. To sum up, we would state, whether there is a shift in the scene of occurrence and whether there is any doubt as to the place where P.W.1 had come to give the complaint, may not detain us at all any longer since, in our considered opinion, have no bearing in deciding the issue projected by the prosecution against the accused in this case and therefore we pass on to the next stage.

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20. The material evidence that has to be considered in this case is whether the accused is guilty of preparing incorrect records? We have already found that the accused had prepared incorrect records. Let us now find out how the learned Trial Judge deals with the above aspect. The learned Trial Judge has completely misdirected herself in appreciating this aspect of the prosecution case. Statements of witnesses recorded by the accused when he was investigating the case cannot be produced and marked by the prosecution. Of course, if they call a witness and he turns hostile, then it is open to the prosecution to confront the witness/witnesses with their earlier statement. That is not the case here. Almost all the witnesses examined in this case had admitted only their signatures (in the narration of the facts in this case, we have dealt with the above referred to material had come out) when the various documents were shown to them. It is for the accused to question on those documents if he has any point in his favour by getting the document itself marked. The prosecution by examining P.W.7 had marked Ex.P.9 which is one of the fabricated record. By examining P.W.21, the prosecution has marked Ex.P.44, the confession statement of Sundaram alias Sundarasamy recorded on 27.12.1995. When the accused was the investigating officer, Ex.P.42 the inquest report had also come to be marked. The learned Trial Judge herself adverts to the fact that Exs.P.42 and P.44 are marked and those documents also, according to the prosecution, are incorrect and framed documents. Therefore the learned Trial Judge is not justified in making a sweeping criticism that the so called incorrect framed documents have not been marked at all. Whether the earned leave already sanctioned to P.W.21 was cancelled or not, again may not be relevant for the purpose of deciding this case. But however the learned Trial Judge has proceeded to comment upon that also in disbelieving the prosecution case. As rightly pointed out by the learned Trial Judge, it is not the present prosecution case that the documents prepared in "draft form" by the side of the well when the dead body was there varied when they were transferred into "regular form". The inquest report Ex.P.42 stands marked through P.W.21 since he is the scribe. The place where Ex.P.42 came to be written namely, by the side of the dead body or in the police station is not the issue. The argument of the learned State Counsel before the court is that it is an incorrect record. The panchayatdars examined in this case had deposed that the inquest was not done in their presence and their signatures in the summons to be served on the panchayatdars were taken in the police station. Since nothing much turns on that, we leave it as it is. Likewise, who prepared the special report submitted to the investigating officer after the post-mortem was completed namely, giving the details of the articles produced (i.e.) whether it is P.W.12 or P.W.13 may not be relevant once again since nothing turns on that. The learned Trial Judge had found in more than one place that there are lapses committed by the investigating officer in preparing the records.

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21. The learned Trial Judge had then taken up for consideration Ex.P.44, the statement of Sundaram alias Sundarasamy recorded under Section 27 of the Evidence Act when the respondent was the investigating officer. In the same breadth the learned Trial Judge had taken into account Ex.P.9 the report shown to have been given by P.W.7 on the accused surrendering before him – the report containing details disclosed by Sundaram alias Sundarasamy. The learned Trial Judge proceeded to disbelieve P.W.7 regarding the circumstances in which Ex.P.9 had come to be recorded on the ground that he being a responsible revenue official, it is unbelievable that he could have prepared the record. We have given enough reasons for believing P.W.7 explaining the circumstances that preceded the preparation of Ex.P.9 by him. The reasons given by us - which in our considered opinion are cogent and convincing, had not entered the mind of the learned Trial Judge. In this context the learned Trial Judge had stated in a very casual manner as hereunder:- (We extract verbatim the same)

> " In this context, the judicial notice to be taken of the prevailing practice which are noticed and pointed out in the manner of investigation of criminal cases time and again is that the tendency to put forth a false theory about the manner of arrest of the accused; recording of confessional statement and seizure of material object and so far as such cases are concerned it need not be necessarily with an intention to screen the real offenders but it may also be with an intention to fix the criminal liability for the commission of the offence on some one, when the identity of the real offender is either not found or the investigating agency is not taking sincere and serious efforts to find out the real culprits, which would only amount to serious dereliction of duty and will not constitute an act amounting to criminal offence under Section 201 I.P.C."

In the same breadth, the learned Trial Judge had also stated that the succeeding police officer - Pichai must also be fastened with the liability. In the earlier portion of this judgment we have found clearly the nature of the role played by the said Inspector of Police by name Pitchai.

22. As far as sending M.Os.11 and 12 to the Forensic Laboratory, the learned Trial Judge had observed at the end of para 23 that "at the best the conduct of the accused in cleaning the tiffin box and sending it to finger print expert would only render the investigating officer liable for departmental action for serious lapses on his part in the discharge of his official duties." How casual is the learned

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Trial Judge's approach on this vital material? The learned Trial Judge also adverts to the evidence of P.W.16, the finger print expert as to what would happen if a material object is cleanly washed before it is examined by the finger print expert for lifting any chance prints. The learned Trial Judge's approach to this problem appears to be too very casual and we have given very good reasons to hold that the accused/the Inspector of Police was bent upon framing incorrect records. The learned Trial Judge summed up that in addition to the accused/the respondent, another Inspector of Police Pitchai was also conducting the investigation and accordingly to the learned Trial Judge from the materials available on record it is not possible to hold that they conclusively establish the guilt of the accused. This again is definitely a casual reasoning made by the learned Trial Judge without really finding out what was the investigation done by the accused in this case? Was there anything further left to be investigated by his successor Pitchai, the Inspector of Police and what exactly Pitchai, the Inspector of Police had done after he took over the investigation? In the earlier portion of this judgment, we have concluded that Pitchai was awaiting only the Chemical Examiner's Report and the final report from the Doctor, who did post-mortem and then after obtaining the Additional Public Prosecutor's opinion he had filed the final report. Therefore in effect , Pitchai had not done any investigation at all. The learned Trial Judge at para 27 of her judgment had held as hereunder:- (We reproduce verbatim her words).

> "It may be true that the then investigating officer would not have conducted the first part of the investigation in the proper direction. But it is one thing to say that investigation is not done in proper direction and it is different thing to say that it is done in such a wrong direction with full knowledge of the commission of the offence and actual offenders with malafide intention to screen the real offenders and only in the later case the provisions of Section 201 I.P.C. can be attracted. .....The act now being complained of against the present accused will only amount to serious lapses dereliction and negligence in the discharge of his duty for which he can be and he could be subjected to departmental enquiry, no criminal liability can be fastened on him for an offence under Section 201 I.P.C. The main aspect to be noted herein is that even the middle of the investigation and in the course of his investigation number of other officials including the Director General of Police, Madras and the then Commissioner of Police, Coimbatore had occasion to know the manner of the investigation done in the present case and about the quantity and quality of the materials collected by said Anbazhagan and none of them had chosen to raise any query as to the manner of investigation done in this case."

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The learned Trial Judge summed up this by stating that "it is only because that the anxiety of all is only to fix some one for the offence than to find out the hidden truth." We are at a loss to understand as to what the learned Trial Judge means by the above observation. We have already held that not only up till P.W.20, the CBCID Inspector of Police conducted the summary enquiry in the first week of April, 1996, but also till 11.11.1998 and 12.11.1998 when P.Ws.1 and 2 came to be examined in S.C.No.110 of 1998, the witnesses were kept under a tight rein. Therefore we have no hesitation at all in holding that the reasons given by the learned Trial Judge for acquitting the accused are palpably wrong and against the legal evidence on record. From the evidence available on record it is not possible to conclude that the accused is innocent. But on the other hand, the evidence definitely leads to the only conclusion of his guilt. The judgment of the learned Trial Judge had also resulted in miscarriage of justice.

23. Having the requirement of Section 201 of the Indian Penal Code in our mind we have no difficulty at all in holding that the accused have framed incorrect records to be used in a court of law only with the intention of screening the offenders from legal punishment. The court below could have framed charges against the accused under Sections 218 and 468 of the Indian Penal Code also. But luckily for him no charges under those sections are framed. On the facts of this case we find that the judgment of the Supreme Court reported in 1975 (Vol.II) Criminal Law Journal 1671 equivalent to A.I.R.1975 Supreme Court 1925 (K. PURANCHANDRA RAO v. PUBLIC PROSECUTOR, A.P) can be usefully referred to. There were two appellants in that appeal. Appellant No.2 is the Sub Inspector of Police. There was yet another accused. The Trial court convicted all the accused under Sections 120B, 366, 376, 302 read with 34, 201, 218, 468 read with 34 and 324 I.P.C. However on appeal by the convicted accused, the High Court retained A.2's conviction under Sections 201, 218 and 468 I.P.C. A.1 was also convicted under the very same sections, of course with the aid of Sections 34 and 109. The facts in that case was, two young girls, who left their parents from the marriage house, were not to be seen thereafter and one of them was found dead in the sea near a sea resort. The only eye witness examined to prove that A.1 and A.2 had something to do with the kidnapping and murder was disbelieved. But however, on the other evidence available, the High Court convicted them under the sections as referred to earlier. The convicted accused went by way of Special Leave Petition before the Supreme Court and the Supreme Court in the above referred to judgment confirmed the conviction. After setting out the facts elaborately the Supreme Court observed as hereunder:-

"In our opinion, the credible circumstantial evidence on record re-inforced by the inferences available from the

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incriminating conduct of the appellants, particularly of A.2 in deliberately preparing false records to suppress the identity and cause of the deaths of the deceased girls, fully justifies the conclusion reached by the learned Judge. We therefore do not feel the necessity of embarking upon a reappraisal of the entire evidence. It would be sufficient to survey and consider the salient circumstances bearing on the alternatives posed above."

In the course of the judgment the Honourable Judges of the Supreme Court eliminated the possibility of death by suicide as well as accidental death. But as already noted, for want of evidence regarding kidnapping and murder, the Supreme Court of India confirmed the acquittal of the accused under those two sections. The Supreme Court took note of the various records which the Sub Inspector of Police was established to have prepared incorrectly and we just state hereunder what those records are and how they were found to be incorrect.

24.The Sub Inspector of Police prepared the inquest report indicating that death of one of the victim, Kalarani, is due to drowning. In the inquest report he had stated that the stomach was bloated with water and froth was coming out of the mouth. On facts it was found that death was not due to suicidal drowning and therefore the inquest report was incorrectly prepared in haste. The second accused - the Sub Inspector of Police was proved to have concocted the complaint in the name of fictitious person. We extract entire para 30 of that judgment:-

"30. Now we come to the last but the most telling circumstance which not only confirms this conclusion and puts it beyond doubt, but also unerringly establishes by inference, the other ingredients of the offence, including that the accused knew or had reason to believe that culpable homicide of Kala Rani had been committed. This circumstance is the conduct of A.2 in intentionally preparing false records and its abetment by A.1."

Then in para 31 the Supreme Court held that "From its very start the investigation conducted by A.2 was dishonest and fraudulent and he intentionally indulged in suppressio veri and suggestio falsi at every step." It was also noticed by the Supreme Court in that case that in undue haste the second accused pretended as though he conducted inquest on the dead body of Kala Rani and concluded that it is suicidal death due to drowning; did not even send the body for post-mortem and instead directed burial of the said body. The second accused was found on facts that Kala Rani, deceased No.1 was known to him and despite such knowledge " he laid a false trial and prepared false record mentioning that the dead body was of a prostitute named

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Vijaya. When the Village Karnam asked the Sub Inspector of Police as to why in a great hurry the body was sent for burying without even sending it for post-mortem and whether any relative of the deceased had come there, the Sub Inspector of Police showed P.W.49, who was present with him at that time as the relative of the deceased." The Supreme Court held as hereunder in para 41 of it's judgment.

> "A.2's conduct in distorting and suppressing material evidence and in preparing false records (Exs.P.11 and P.25) as to the identity of the dead body, the cause of death and the falsification of the data bearing on that cause, could not be explained on any reasonable hypothesis save that of his guilt. The circumstances established in this case unmistakably and irresistibly point to the conclusion that within all human probability, accused No.2 knew or had reasons to believe that Kala Rani had been done to death by some person or persons. All the elements of the charge under Section 201 had thus been proved to the hilt against him."

Commenting upon the improper conduct of the Sub Inspector of Police in that case, the Supreme Court again observed as hereunder:-

> "The position of A.2 in the present case was very different. He was a Police Officer and as such was expected to discharge the duties entrusted to him by law with fidelity and accuracy. He was required to ascertain the cause of the death and to investigate the circumstances and the manner in which it was brought about. His duty it was to make honest efforts to reach at the truth. But he flagrantly abused the trust reposed in him by law. He intentionally fabricated false clues, laid false trials, drew many a red herring across the net, smothered the truth, burked the inquest, falsified official records and shortcircuited the procedural safeguards. In short, he did everything against the public justice which is penalised by Section 201 Penal Code. The other circumstantial evidence apart the series of these designed acts of omission and commission on the part of A.2 were eloquent enough to indicate in no uncertain terms that A.2 knew or had reasons to believe that Kalarani's death was homicidal."

25. In our respectful opinion, each and every line extracted above from the judgment of the Supreme Court would squarely apply to the case on hand. We sum up our conclusions hereunder:-

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"Right from day one namely, when the accused prepared the inquest report (Ex.P.42) he had decided to show the escape route for the real offenders. It what P.W.2 speaks in court is false and if really P.W.2 had stated during inquest that Sundaram alias Sundarasamy confessed to him admitting his involvement in the crime, then nothing would have prevented the accused from contradicting P.W.2 in court with his earlier statement, which he had not done. If really P.W.2 knew that A.4 is the accused even by 8.30 p.m. on 23.12.1995, then we see no reason at all as to why P.W.2 should have had any hesitation to disclose the accused involved in the crime to P.W.1 during the day time of 23.12.1995 when he came across her several times. Therefore the evidence of P.Ws.1 and 2 definitely eliminates the examination of P.W.2 during inquest. The modus operandi adopted by Sundaram alias Sundarasamy to have sexual pleasure with the deceased despite her protest; killing her and then throwing her body into a dilapidated well as mentioned in the inquest report Ex.P.42 could not have been available at all for the investigating officer to be incorporated in the inquest report when the inquest was so held between 9.00 p.m. and 1.00 a.m. on the intervening night of 23.12 and 24.12.1995. There is evidence to show that Sundaram alias Sundarasamy was taken to the police station by the evening of 23.12.1995 and thereafterwards he was not to be seen at all in the public. P.W.2 was threatened by the accused immediately after the occurrence namely, on the second day that he should not divulge the crime to anyone as otherwise he would be put in the case. The presence of A.1 and A.2 on more than one occasion in the police station immediately following the occurrence day and A.1's presence in the police station for interrogation stands established. This means when the complaint given by P.W.1 came to be registered under Section 174 of the Code of Criminal Procedure the accused could have definitely had some clue about the involvement of A.1 alteast, as otherwise he would not have summoned him for interrogation. The evidence on record probabilises that after interrogation, immediately following the occurrence day, A.1 might have allowed to go and again summoned and that is how his presence in the police station two or three days later is spoken to by P.W.2. P.W.7 surrendered Sundaram alias

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Sundarasamy in the police station on 27.12.1995 is definitely false, for which we have given enough reasons earlier. P.W.7 could not have prepared Ex.P.9 on his own but for the dictation of the Inspector of Police/ the accused. The presence of M.O.8,11 and 12 on the table of the Inspector of Police/accused on 27.12.1995 itself, as spoken to by the witnesses falsifies Ex.P.44 as the voluntary disclosure made by Sundaram alias Sundarasamy. If Ex.P.9 and Ex.P.44 alone reveal the concealment of M.Os.8,11, and 12 by the said Sundaram alias Sundarasamy in a different place, then it is not possible to explain as to how M.Os.8,11 and 12 were on the Inspector's table even by the time (i.e.) 27.12.1995 when Ex.P.9 was received, Ex.P.44 was reduced into writing. Sending M.Os.11 and 12 after cleanly washing it to the laboratory to lift the chance prints and that too, directly and not through Court is an incriminating material against the accused. There is no evidence before court to show, who lifted the finger prints of Sundaram alias Sundarasamy. Exs.P.32 and 33 are the reports from the Finger Print Expert Bureau and each is dated 27.12.1995 namely, the date on which Sundaram alias Sundarasamy is shown to have been surrendered by P.W.7 before the accused. We are unable to visualise as to how M.Os.11 and 12 and P.33, the paper containing the finger prints of Sundaram alias Sundarasamy could have been received in the laboratory on the same day; (i.e.) 27.12.1995; examined on the same day and the report were also sent on the same day. There is something mysterious about this. The modus operandi alleged to have been adopted by Sundaram alias Sundarasamy in first going about to have sexual pleasure with the deceased; murdering her and then throwing her into a dilapidated well, have come on record for the first time only from Ex.P.9 and P.44. If that is so, it is not capable of being explained in the absence of any other evidence to show that the accused had all those details with him earlier and how those details would come to be incorporated in the inquest report Ex.P.42 stated to have been prepared by him after conducting inquest on the dead body from 9.00 p.m. till 1.00 p.m. on the intervening night of 23.12 and 24.12.1995."

These are all the telling circumstances from which the guilt of the accused under Section 201 I.P.C. can be easily inferred and concluded. Unfortunately the learned Trial Judge had not adverted to any of these

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legal materials available on record, which have definitely vitiated her judgment.

26. For all the reasons stated above holding that the judgment under challenge suffers from serious infirmities in law; the reasons given for acquitting the accused are palpably wrong; erroneous; no court of ordinary prudence and good conscience could arrive at the conclusion of acquittal and as such it has resulted in miscarriage of justice, we are inclined to set aside the judgment under challenge and accordingly it is reversed holding that the prosecution had definitely established that the accused is guilty of the offence under Section 201 I.P.C. The appeal is allowed. Since we have interfered with the judgment under challenge in exercising the appellate power, we are of the opinion that there need not be any separate order in Crl.R.C.No.238 of 2001. In other words, since this Court had re-appreciated the entire evidence and came to a different conclusion as far as the accused is concerned, we feel that nothing survives in Crl.R.C.No.238 of 2001. Accordingly, it stands disposed of. We have already placed on record our due appreciation in the connected judgment for the efforts taken by P.W.25 to unravel the truth at the cost of receiving wrath from his colleague in the police service. We reaffirm in this judgment also what we have stated about him in para 54 in that judgment.

Post the appeal on 9.4.2007 for questioning the accused on sentence.

Tr/ 4.4.2007

The Crl A. No.151 of 2001 having been posted on 9.4.2007 for questioning the accused on sentence pursuant to the order of this Court dated 4.4.2007 and made in Crl.A.No.151/01 and Crl.R.C.No.238/01 and in the presence of the aforesaid advocates, the Court made the order:

(Judgment of the Court was made by
R. Balasubramanian, J)

The respondent/the accused in S.C.No.214 of 2000 on the file of I Additional Sessions Judge-cum-Chief Judicial Magistrate, Coimbatore is present. We explained to him that we have found him guilty under Section 201 I.P.C. and asked him as to what he wants to say on the question of sentence to be awarded and he stated as hereunder:-

"He was directly recruited as a Sub Inspector of Police in the year 1979; he has an unblemished record; he had received 108 awards; the present murder case is the first case which he has investigated in his capacity as an Inspector of Police; he married his sister's

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daughter; he has two children, out of whom, one is a girl and both of them are studying in the college; his father-in-law is dead and his mother-in-law is under his care; both the children have to write the University Exams and therefore this court may consider imposing a lenient sentence."

2. Having regard to the circumstances brought to our notice, for the offence for which he is found guilty, we are inclined to sentence him to undergo two years rigorous imprisonment together with a fine of Rs.5,000/-, in default to undergo six months rigorous imprisonment. We direct the respondent/Anbazhagan to be confined in Central Prison, Chennai now located at Puzhal for the present, who shall later on be transferred to the Central Prison at Coimbatore. The prison authorities is directed to verify the period of imprisonment, if any, already undergone by the convicted accused. If so, the period of sentence already undergone by the respondent, would be set off against the sentence imposed on him by us now.

Tr/

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The First Additional Sessions Judge
cum Chief Judicial Magistrate, Coimbatore.

2. Do Thro' The Principal Sessions Judge,
Coimbatore.

3. The Superintendent Central Prison, Puzhal, Chennai.
(in duplicate for communication to the accused)

4. The Superintendent, Central Prison, Coimbatore.

5.The Public Prosecutor, High Court, Madras.

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6. The Inspector of Police, CBCID, All Women P.S.,
B 9, Saravampatty P.S., Coimbatore City.

7. The Director General of Police,
Mylapore, Chennai 4.

8. The District Collector,
Coimbatore District.

+ 2 ccs to Mr. K. V. Sridharan, Advocate SR No. 22160 & 22494

Judgment in
Crl.A.No.151 of 2001 &
Crl.R.C.No.238 of 2001

NG(CO)
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